IRFD Project Description

Standardisation of Transitional Justice: Consolidation, Innovation and Politics

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Puzzles and Contributions

'Transitional justice' (TJ) denotes institutional justice responses to past violence, such as criminal trials, truth commissions, purges, reparations, reform, memorials and amnesty. Implemented in over 116 countries since 1970, TJ has recently been internationally standardised. It is now defined as consisting of four 'essential' mechanisms: criminal justice, truth-seeking, reparations and reform (African Union 2019; EU 2015; UN 2009; 2011). The recent standardisation of TJ is puzzling because it consolidates existing practices, although these have so far been unable to demonstrate a beneficial effect on transitional societies. Indeed, there is 'an abundance of evidence which scrutinizes [TJ's] real-world impacts unfavorably' (Macdonald 2019, 247). Moreover, the standard's uniform justice responses have paradoxically developed from a heterogeneous field of different transitions and types of injustice. The project responds to these empirical problems by taking the process of TJ standardisation as its object of analysis. Its goal is to understand how, why and by whom TJ has been standardised. It contributes to developing the field of TJ at three levels.

Theoretically, the project provides *the first study of the politics of TJ standardisation and the relationship between consolidation and innovation in standardised TJ.* Empirically, it analyses *standard setting* and the *implementation and negotiation of the standard* in three sites. This new knowledge provides scholars with a *foundation for critical analysis of TJ policies and practices* and enables practitioners globally to reflect on its relevance for them. These reflections will open up a space for formulating alternatives to standardised TJ, potentially leading to *better programmes* and *beneficial societal impact*.

State of the Art

The field of TJ comprises the practice and analysis of distinctive legal and political forms of response to past mass violence and repression, such as amnesties, criminal trials, truth commissions, purging, reparations, reform and memorialization (Buckley-Zistel et al. 2013; Sharp 2018; Teitel 2000). Emerging in the 1980s in relation to Latin America's democratic transitions, and inspired by Germany's '*Vergangenheitsbewältigung*'[1], TJ has become the dominant global framework for establishing reparative and punitive institutions in the wake of repression and conflict. This

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[1] The term indicates dealing with a traumatic past. In Germany it centres on Nazism and World War II (Fischer and Lorenz 2015), but has recently been extended to East Germany's Communist past.

globalisation followed innovative applications of the framework to post-conflict contexts, other regions (Africa and, later, the Middle East), and even 'non-transitions' (Hansen 2011; 2013).

TJ scholarship is interdisciplinary and typically draws on Anthropology, Criminology, Law, Philosophy, Politics and Sociology. Since the 1980s, the field has gone through a process of growth, stabilisation, introspection and crisis (Balasco 2013; Teitel 2003). The crisis reflects a growing body of literature challenging TJ practice: Studies fail to demonstrate that trials and their alternatives (amnesty and re-integration) contribute to reconciliation or non-recurrence (Akello 2019; Akello, Richters and Reis 2009; Clark 2015; Meernik et al. 2010; Olsen et al. 2019; Thoms et al. 2010). TJ has become 'normalised', uniform and legalistic (Gissel 2017a; Macdonald 2019; McEvoy 2007) and ignores local justice notions and socio-economic injustices (Nickson and Braithwaithe 2014; Sharp 2018). Turner (2017, 13) is correct in finding 'remarkably little deeper questioning of the basic premise of transitional justice or the foundations upon which it is constructed.'

The field's standardisation is partly responsible for the crisis. A 'technical' and 'policy-oriented' standard has encouraged or imposed misguided or even 'dangerous' justice processes in transitional situations (David 2017; 2020; Lambourne 2014; Macdonald 2019; Sharp 2018). Its 'toolkit approach' subjects demands for justice to 'generalised rules, norms and imperatives' (Turner 2017, 167). Yet, while the new standard is problematized in some research, standardisation has not been researched in its own right. This project fills this gap, using an innovative theoretical framework.

Theoretical Framework

To investigate the standardisation of TJ, we combine international relations scholarship on international standardisation with research on the politics of TJ. The framework conceptualises standards, standardisation, and actor-level responses to standardisation, outlines how to approach politics, and theorises standardisation's effects on the field (consolidation and innovation).

Standardisation is a formal or de-facto 'process of constructing uniformities across time and space' through the generation and adoption of agreed-upon rules (Timmermans and Epstein 2010, 71). It is a circular process of making practices 'transferable' and establishing the means to 'facilitate their replication' (Demortain 2008, 393). A standard is a 'package of information' that defines 'solutions for matching problems' (de Vries 2015, 22). These packages not only direct attention *to* some solutions but also *away* from others; standardisation thus involves the 'power of the penholder', who sets the standard (Mattli and Seddon 2015, 169). Experts are key actors: Due to the transferability of standardards, standardisation involves a process of 'generification' and 'localisation', where experts formulate an exportable generic formula and help apply it locally (Demortain 2008, 393). As TJ standardisation has so far not been an object of investigation, it is assumed akin to other international de-facto standardisation processes (Abbott and Snidal 2001; Delimatsis 2015; Mattli

and Büthe 2003). Accordingly, it is approached as voluntary, purposive, expert driven yet 'highly politicised' (Delimatsis 2015, 8), and institutionalised by international organisations (IOs). The analytical distinctions between *development*, *acceptance* and *resistance* describe responses to standardisation (Delimatsis 2015; de Vries 2015), while those of *standard makers* and *takers* describe two associated roles (Mattli and Seddon 2015).

In the field of TJ, standardisation is assumed to involve *politics* understood as struggles over power, resources and meanings (for politics in TJ, see Bosco 2014; Murithi 2019; Nouwen and Werner 2011; Royer 2019; Pham et al. 2019). Politics is endogenous, not an independent variable. Actors may develop, accept or resist standard TJ for material and ideational reasons relating to the country's transitional context, political history and balance of powers and, at the global level, expertise, IO rivalry and state foreign policies. Power inequalities shape donor-funded TJ.

The responses by transitional societies to standardisation have effects on the field: They can consolidate or innovate the field, with consolidation and innovation representing two opposite ends of a continuum of TJ standardisation. *Consolidation* happens when actors accept and implement the standard, as this confirms the relevance of existing TJ institutions and reproduces the standard. *Innovation* takes place when actors resist the standard and instead implement alternative justice forms. Over time, these innovations may develop the standard (turning innovators into standard makers) or they may continue to exist outside the standard (contributing to describing its negation). The framework builds on the applicant's previous work (Gissel 2017a; 2018b) and has been piloted in Destrooper (forthcoming), an edited book to which Gissel contributes.

Research Questions and Design

Against this theoretical background, the project answers the following **research questions** (RQ):

> *Overall RQ: How, why and by whom has TJ been standardised?*

- **RQ 1**: What is the TJ standard?
- **RQ 2**: Who formulated and institutionalised the TJ standard at the global level?
- **RQ 3**: How do actors understand the TJ standard?
- **RQ 4**: How and why do actors accept and/or resist the TJ standard?
- **RQ 5**: Which local TJ innovations have been accepted as the TJ standard?
- **RQ 6**: How does responses to standardisation consolidate and innovate the field?

The project is organised in four case studies and two work packages (WP). The case studies analyse the politics of TJ standardisation in particular sites: the UN, Uganda, Colombia and Syria. The WPs compare the case study findings in order to develop a deeper understanding and theorise consolidation, innovation and TJ standardisation. The design aims to investigate and compare cases in order to understand the larger phenomenon they represent (TJ standardisation).

Case Selection: The cases are selected purposefully on the basis of expectations about their information content (Flyvbjerg 2006, 230). The UN is selected because the standard developed largely there; it is the main site of global TJ policymaking (Evans 2012; Doxtader 2011; Kent 2012) and 'generification'. The three other cases are selected for maximum variation: Uganda, Colombia and Syria vary in terms of responses to standardisation. Uganda has been a willing laboratory for standard TJ (Arnould 2015; Branch 2011; Macdonald 2019). A standard taker, it has the world's first national TJ policy. Syria represents the opposite: There is no government willingness for TJ, but a many innovative justice responses by transnational civil society (Haugbølle 2019; Jazairi 2015; Kabawat and Travesí 2018). It is thus low on acceptance and high on resistance. Colombia represents the middle position with regard to reponses. There is acceptance of TJ *and* innovation (Maldonado 2017; Oettler and Rettberg 2019; Roccatello and Rojas 2020). Table 1 summarises.

Table 1. Variation in Responses to Standardisation across Cases

| | Cases of TJ Standardisation | | | |
	UN (A)	Uganda (B)	Colombia (C)	Syria (D)
Acceptance	High	High	Medium	Low
Resistance	Low	Low	Medium	High
Development	High	Low	Medium	High

Methods for Analysis: The project uses within- and across-case analysis: within-case analysis in A-D and comparative across-case analysis in the WPs. RQs 1-2 are answered in case study A (the UN). RQs 3-5 are each answered in case study B (Uganda), C (Colombia) and D (Syria). WP 1 compares A-D to answer RQ 6, while WP 2 builds on A-D and WP 1 to answer the overall RQ. Table 2 locates the RQs in the case studies and the WPs.

Table 2. Research Questions in Case Studies and Work Packages

Case Studies	UN (A)	Uganda (B)	Colombia (C)	Syria (D)
	• What is the TJ standard? • Who formulated and institutionalised the TJ standard at the global level?	• How do actors understand the TJ standard? • How and why do actors accept and/or resist the TJ standard? • Which local TJ innovations have been accepted as the TJ standard?		
WP 1	• How do responses to standardisation consolidate and innovate the field of TJ?			
WP 2	• How, why and by whom has TJ been standardised? (Overall RQ)			

The case studies use qualitative empirical methods based on the team's disciplinary backgrounds (Political Science, Law and Global Studies). Study A will use interpretive process tracing (Norman 2015; Pouliot 2015) to analyse the standard and standard setting. Study B will make a socio-legal analysis, combining legal analysis of Uganda's TJ policy with socio-legal analysis of responses to the global standard and the role of experts. Study C and D will use political ethnography (Schatz 2009; Stepputat and Larsen 2015) to understand local reactions and innovations. By investigating reactions and innovations, B-D will study how local actors understand the standard. For safety

reasons, D will not involve travelling to Syria, but will study transnational civil society and diaspora activism for justice in Beirut, Berlin and Istanbul. As a PhD project, D needs to demonstrate an ability for independent research; the proposed project provides analytical space for such an endeavour.

Comparison: The analysis in the WPs rely on comparison of the case study findings. This comparison will analyse how the global standard and the interactions between this and local understandings, responses and innovation produce TJ standardisation. The variation in case properties (see Table 1) provides analytical leverage to identify the 'mechanisms' (Pouliot 2015, 251) involved in the field's consolidation and innovation (as per RQ 6) and TJ standardization (the overall RQ). E.g., in-depth case *and* comparative analysis can explain why Uganda's 2008 policy innovation on rebel accountability was deemed a violation of the standard, while Colombia's similar innovation in 2016 was accepted by standard setters. Methods for comparing process tracing results draw on Blatter and Haverland (2012) and Bennett and Checkel (2015).

Data: The methods are applied to similar types of data collected in each case: laws, policy documents (resolutions, policies, guidelines, programme documents), IO and NGO reports, emic accounts, and transcriptions of interviews with TJ actors (representing governments, civil society groups, activists, international human rights NGOs, donor agencies, and IOs). Interviewees are elites, not victims of atrocity (but in case study D activists may have experienced injustices). The data will be systematically analysed using NVivo software, with which the team has experience.

Project Team and Collaboration

Gissel will lead the research team and is responsible for project management and meeting the milestones. Team members are trained in Political Science, Law and Global Studies and will each be in charge of one case study:

- *Line Engbo Gissel*, Associate Professor, RUC: Case study A (UN)
- *Thomas Obel Hansen*, Senior Lecturer, Ulster University: Case B (Uganda)
- *Line Jespersgaard Jakobsen*, Post-doc, RUC: Case study C (Colombia)
- *NN*, PhD candidate, RUC: Case study D (Syria).

All members contribute to theorizing the WPs through participation in workshops and conferences, and in publications. However, the PI is in charge of ensuring their RQs are answered in publications.

The team possesses the necessary skills to carry out the project. Gissel, a political scientist, has researched TJ for a decade and published both empirical and theoretical contributions on the nature of TJ, the judicialisation of transitional politics, and the politics of law (Gissel 2017a; 20017b; 2018a; 2018b; Brett and Gissel 2018; 2020). Prior to her academic career she worked as a project manager and is certified in project management in the UK. She currently holds positions of leadership

and is a member of two research projects.[2] Hansen, a lawyer with a law-and-society approach, has published *extensively* on TJ, both on criminal accountability, the field of TJ, and TJ in East Africa (Hansen 2011; 2013; 2019; Hansen and Sriram 2015). Hansen is a member of the world-renowned TJI and will facilitate a closer relationship between TJI and ISE, benefitting TJ scholars in Denmark. He has considerable experience with managing research projects. Jakobsen is finalizing her PhD on corporate security in Colombia based on extensive fieldwork. Fluent in Spanish, she has previously studied TJ in Bolivia. Her Global Studies MA thesis won a prize and has partly been published (Jakobsen and Buur 2019). The PhD student will be competitively and internationally recruited, the job advertised widely in TJ networks.

The ***Advisory Board*** has four distinguished members who will contribute quality assurance, peer review and expertise to the project and to Danish TJ scholars: *Brandon Hamber*, Professor of Law at Ulster TJI; *Angelika Rettberg*, Professor of Politics at Universidad de los Andes and Fellow at Peace Research Institute Oslo; *Jeff Deutch*, activist and Director, Syria Archive; and *Thomas Brudholm*, Associate Professor, Copenhagen University. The board will participate in project workshops, will possibly co-write, and will help to evaluate the project.

Publication and Dissemination Strategy

The research ***outputs*** consist of a PhD dissertation and 9 articles in leading journals, such as *Development and Cooperation*, *Global Governance*, *International Journal of TJ*, *Journal of Law and Society*, and *Harvard Human Rights Review*. Gissel, Hansen and Jakobsen will each be responsible for 3 journal articles. 3-4 articles may be co-written by team members, including Advisory Board members. Academic ***feedback*** is an important part of the strategy and this will be the focus of monthly online team meetings, PhD and post-doc supervision, three project workshops, four Advisory Board meetings, joint participation in international conferences, as well as the PhD and post-doctoral research stays. These opportunities also provide ***deadlines*** that propel the data collection, analysis and writing forward. Team members will ***disseminate*** their findings in online blog posts, as guest speakers during fieldwork, and in media interviews (for this experience, see the CVs).

Project Plan

The proposed project lasts 4 years, with the PhD student (NN) recruited Sept.-Nov. 2021. NN and Jakobsen will each participate for 3 years (co-funded by ISE). The project involves activities relating to project management; team coordination and collaboration; quality control; professional development (supervision, workshops, conferences, research stays); further development of an

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[2] Leader of Global Political Sociology research group; member of Building Stronger Universities phase III collaboration with Gulu University and Everyday Humanitarianism in Tanzania (PI Lisa Richey, CBS).

analytical framework; fieldwork; and analysis and writing (publications and dissemination). The allocated time reflects the team members' workload and expected effectiveness. The PI, who will manage the project, conduct a case study and be responsible for WP 1 and 2, has more time than Hansen. Gissel and Hansen are more effective than Jakobsen and NN, needing less research time.

Table 3. Project Milestones

Milestones		2021 Autumn	2022 Spring	2022 Autumn	2023 Spring	2023 Autumn	2024 Spring	2024 Autumn	2025 Spring
Project Mngmt.	Recruitment	▓							
	PhD position		▓	▓	▓	▓	▓	▓	
	Post-doc position		▓	▓	▓	▓	▓	▓	
	Team meetings	▓		▓		▓		▓	▓
	Workshops		▓		▓		▓		
	Adv. Board meetgs		▓		▓		▓		▓
Supervision			▓	▓	▓	▓	▓	▓	
Analytical framework		▓	▓						
Fieldwk.	UN (*Gissel*)			▓			▓		
	Uganda (*Hansen*)		▓		▓				
	Colombia (*Jakobsen*)			▓		▓			
	Syria related (*NN*)			▓		▓			
Research Stays						▓			
Outputs	Conferences			▓	▓		▓		
	Articles		▓	▓	▓	▓	▓	▓	▓
	PhD Thesis								▓
	Dissemination				▓	▓	▓	▓	▓

Feasibility The proposed project is entirely feasible given its temporal and human resources. The case studies depend on access to interlocutors and documents. The team has extensive experience of getting such access. The risk of non-access will be mitigated by preparation, university links, networking, and optional interviewee anonymity. Members have links to Syria Archive, Gulu University, Nairobi University, Danish embassies, and numerous NGOs. If fieldwork is reduced or cancelled (e.g. due to Covid-19), the proposed data collection methods will be revised and replaced with appropriate ones: digital ethnography, online archival research, online interviews, and, if possible, local research assistance. A global and institutionalised phenomenon, TJ standardization has left an electronic paper trail; if necessary, it can therefore be studied from a distance.

Ethical Considerations

The project team will live up to the Danish Code of Conduct for Research Integrity and will collect and store data in accordance with the EU GDPR. Interlocutors are elite subjects (not victims of atrocity), will have to grant explicit consent, and will have access to the research they helped to produce. Project meetings will share emotional responses to researching. The case study D investigator will be offered psychological counselling to avoid traumatization by the data collection. E.g., *Syria Archive* documents atrocities in Syria and activist interviewees may narrate violence.

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